

EXHIBIT “P”

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TINA LINDQUIST,)
Plaintiff,)
vs.) No. 04-249E
HEIM, L.P.,)
Defendants.)

ORIGINAL

The video deposition of MATTHEW
ULMENSTEIN, called for examination pursuant to
the Rules of Civil Procedure for the United
States District Courts pertaining to the taking
of depositions, taken before Patricia L.
Wangler, a notary public within and for the
County of DuPage and State of Illinois, at
33 North LaSalle Street, Illinois, on the
6th day of April, 2006, at the hour of
9:00 o'clock a.m.

Reported By: Patricia L. Wangler, CSR
License No.: 084-002417

1 Q. Great. There is one more piece of
2 paper there with you. What all did you bring?

3 A. Just that and the note of where to be.

4 Q. May I see it please.

5 A. Sure.

6 Q. You are hesitating. Do you have any
7 reason to hesitate in giving me that piece of
8 paper that relates to this case?

9 A. No.

10 Q. Okay.

11 A. I just didn't know you would be asking
12 for it.

13 Q. No, because you weren't provided with a
14 copy of my notice of deposition; right?

15 A. I have no idea.

16 Q. Okay. If we look at 3, Section 3, it
17 says identification.

18 A. Yes, sir.

19 Q. Who provided that?

20 A. That was both Professor Barnett and
21 myself.

22 Q. And I note here that the second
23 paragraph indicates that we were dealing with a
24 Model 532-SWH Hercules heavy duty footswitch

1 with a full shield provided at the time of the
2 sale of this press brake; is that right?

3 A. That is what the report states.

4 Q. Do you have any reason to dispute that?

5 A. Yes.

6 Q. And what is that?

7 A. That is that that was my error in
8 indicating the model number that was provided on
9 a drawing supplied by Heim that they cannot
10 determine if it was the correct drawing or
11 not -- or the correct specification.

12 Q. Do you know what footswitch was
13 supplied with the press brake back in 1978?

14 A. I do not.

15 Q. Does Professor Barnett know?

16 A. I have no idea as to what he knows or
17 does not know.

18 Q. Do you know of anyone that's ever -- do
19 you know of anyone that knows what footswitch
20 was provided with the press brake back in 1978?

21 A. I have no idea.

22 Q. I take it you saw the 1974 drawing that
23 was produced by Heim which identifies a 532-SWH?

24 MR. HARTMAN: It is a 1982 drawing.

1 MR. ROBINSON: Counsel, 1974 drawing, thank
2 you.

3 THE WITNESS: But it is -- there was scratch
4 marks on it.

5 BY MR. ROBINSON:

6 Q. Did you see the 1974 drawing that
7 identifies the 532-SWH?

8 A. I saw a page that was barely readable
9 and Model 532-SWH was noted on there and then
10 scratched off for a replacement model I believe
11 in '82 I believe the date was.

12 Q. Yes, okay. And the last sentence of
13 that identification section indicates -- where
14 it indicates -- let me -- that was a horrible
15 beginning of my question.

16 The first sentence identifies it as a
17 Model 532-SWH; is that right?

18 A. That is what the report states.

19 Q. And the second sentence says, "This is
20 consistent with photographs of the subject
21 footswitch after the accident"?

22 A. Which is incorrect.

23 Q. That's incorrect as well?

24 A. No, the -- it -- it -- the model number

1 is inconsistent with the photographs of the
2 footswitch after the accident.

3 Q. Well, who wrote that, that, "This is
4 consistent with photographs of the subject
5 footswitch after the accident"?

6 A. I believe I did.

7 Q. Did Professor Barnett read this before
8 he signed it?

9 A. I have no idea as to what he did or
10 not.

11 Q. Do you think that he would do that?

12 A. I cannot speculate as to what he would
13 do or would not do.

14 Q. Does he typically read things that he
15 signs?

16 A. I believe so.

17 Q. If you turn to Page 7, it is again
18 indicated it was a 532-SWH sold with the subject
19 press brake; doesn't it?

20 A. Yes, sir.

21 Q. Who wrote this section?

22 A. I believe I inserted the model number
23 in the report section that was dictated to me by
24 Professor Barnett.

1 Q. Well, who indicated -- back to our
2 first section where it says, This is consistent
3 with photographs of the subject footswitch, how
4 did that error occur? Why is that wrong I guess
5 is a better way to say? Why are you testifying
6 that that's now wrong?

7 A. No, I am testifying that the
8 consistency with the photographs and the
9 Model 532 is incorrect.

10 Q. Yeah, and how did that happen? I
11 assume you looked at the photographs. I assume
12 either you or Professor Barnett looked at the
13 photographs and then looked at the 532 and said
14 they look to be the same because that's what
15 this says, that's what this says; right?

16 A. That is -- I believe it says that it is
17 consistent with the photographs of the subject
18 footswitch.

19 Q. Yeah, it says the 532 is consistent
20 with -- the Model 532-SWH is consistent with the
21 photographs of the subject footswitch; is that
22 right.

23 A. Yes, and I said that's incorrect
24 several times now.

1 Q. Yes, okay, I want to make sure the
2 record has your -- your -- the errors in your
3 report identified. And how did that error
4 occur?

5 A. The error occurred because I -- we had
6 already written the -- I believe the section was
7 already written in terms of the -- describing
8 the footswitch as it does in the following
9 paragraph. And then I came upon the one page,
10 the Drawing A-470 was it? I believe that's the
11 number.

12 Q. I believe it is.

13 A. The specification of the footswitch.
14 And I saw the model number and just inserted it
15 into the report and didn't do the proper
16 research into what the Model 532 entailed.

17 Q. If you were to rewrite your report
18 would you include a different number?

19 A. If I were to rewrite the report, I
20 wouldn't include the Model 532.

21 Q. That's the same one you have included.

22 A. Yes, I would not include that number.

23 Q. What would you include, what number,
24 what model number?

1 A. I wouldn't specify a model number.

2 Q. Well, how do you know if Tina Lindquist
3 was using the foot control that was sold with
4 the machine in '78?

5 A. Personally I have no idea as to an
6 opinion on that.

7 Q. That's not -- okay.

8 Have you talked with Mr. Hartman about
9 this issue, about identifying the foot switch
10 that Tina Lindquist was using as being the same
11 as the one that was sold in '78? Have you
12 talked with him at all about that issue?

13 A. The subject might have been broached in
14 terms --

15 Q. Might have been broached? When would
16 that have been broached?

17 A. Perhaps on a phone call and he might
18 have said such things to Professor Barnett. I
19 have no idea.

20 Q. Do you remember those conversations,
21 Mr. Ulmenstein?

22 A. I do not.

23 Q. Why do you say they might have been
24 broached, and they might have been broached in a

1 phone call and they might have been broached in
2 a conversation with Professor Barnett?

3 A. Because I believe that the
4 identification in this case is fairly important.

5 Q. Have you heard of anyone -- have you
6 heard anyone indicate that the foot control that
7 Tina Lindquist was using at the time of the
8 accident was the one that was sold with the
9 machine at the time in 1978? Has anyone said
10 that to you?

11 A. No one has said that this footswitch
12 was specifically the one sold with the machine
13 to me.

14 Q. I lost you. I am a little hard of
15 hearing. I am sorry. Say that again.

16 A. Sorry. No one has said to me that this
17 footswitch was specifically the one that was --
18 that came with the machine.

19 Q. Has anyone told you that it is not?

20 A. No one has told me specifically that it
21 is not.

22 Q. Have you read the deposition
23 transcripts of some of the employees of Corry
24 Manufacturing that have given their opinions

1 that they would not be the same?

2 A. I have not.

3 Q. That's a pretty significant issue did
4 you say to make sure we have the same footswitch
5 used by Tina Lindquist as the one sold back in
6 1978; right?

7 A. I am not certain.

8 Q. Sorry?

9 A. I am not certain. I can't --

10 Q. I think you just said it a moment ago.
11 It is a pretty significant question; isn't it?
12 You wouldn't want to sue Heim for providing a
13 dangerous footswitch that wasn't even in use at
14 the time of the accident; would you?

15 A. I have no idea, sir.

16 Q. Does that make sense to you, sir, that
17 you would author a report or your employer or
18 Mr. Barnett would author a report trying to hold
19 Heim liable for supplying a footswitch back in
20 1978 that wasn't even in use at the time of the
21 plaintiff's injury?

22 A. I can't give --

23 Q. Does that make any sense to you, sir?

24 A. I can't give any opinion on it, sir.

1 Q. You can't even say if that makes sense
2 to you?

3 A. Not in this venue in terms of I cannot
4 make a statement to that.

5 Q. What foot control was used for the
6 testing that you have described?

7 A. I believe one of the foot controls was
8 indicated towards the end of the report, 511, I
9 believe they are both 511's.

10 Q. When you say both 511's, what do you
11 mean by that?

12 A. The -- the Linemaster Model 511B2 I
13 believe was one of the models.

14 Q. I want you to check your report because
15 this is something I want to make sure we
16 don't --

17 A. On Page 11 in C the -- it indicates
18 that the Linemaster 511B2 used in our human
19 factors testing. They were both Linemaster 511
20 models I believe, one with the gate, one
21 without, both with the antitrip treadle latch.

22 Q. And was a 511 chosen?

23 A. I believe that was what we had in
24 Triodyne's selection of footswitches from

1 Linemaster.

2 Q. Why wasn't a 532 chosen?

3 A. I have no idea.

4 Q. You can still buy a 532 from Linemaster
5 today; can't you?

6 A. I am not certain.

7 Q. Have you looked at any of their
8 literature that has been identified in the
9 report that you saw?

10 A. I have not looked at any of the current
11 literature whether you can buy a 532 today, sir.

12 Q. Do you have any reason to believe you
13 cannot go out to Linemaster and buy a 532 today?

14 A. I have no reason to believe that I can.

15 Q. Why wasn't there -- was there any
16 attempt made by Triodyne employees to obtain a
17 532 for testing purposes since that's what was
18 identified in the report as being provided back
19 in 1978 with the machine?

20 A. No, sir.

21 MR. HARTMAN: I am going to object to the
22 form of the question and that the witness has
23 indicated that that 532 number is an incorrect
24 number --

1 photographs to be?

2 A. I believe those photographs are of a
3 footswitch that was at Mr. Hartman's office.

4 Q. Okay. Who took these photographs?

5 A. I believe Christopher Ferrone.

6 Q. Who is that?

7 A. He was an engineer for Triodyne at the
8 time, and he is currently -- he followed Peter
9 Poczynok as previously mentioned to Arca.

10 Q. Can you spell his last name for the
11 court reporter.

12 A. F-E-R-R-O-N-E.

13 Q. Okay. And in another document that we
14 were given is the original report --

15 A. Yes.

16 Q. -- that Professor Barnett brought with
17 him. He indicated on here that on Page 2 there
18 is some handwriting and he said it was yours.

19 A. Yes, sir.

20 Q. Is that your handwriting?

21 A. It is.

22 Q. And when did you write that on that
23 report?

24 A. I believe it was yesterday afternoon.

1 Q. Was it in the presence of Mr. Hartman?

2 A. No.

3 Q. Why was that inserted?

4 A. Because we had realized the error of
5 the 532, naming the 532 that I discussed
6 earlier.

7 Q. Did you have any conversations with
8 Mr. Hartman about that error before you wrote
9 that notation?

10 A. We -- I believe we had discussed it,
11 yes.

12 Q. And --

13 A. Not that day, not yesterday but
14 previously.

15 Q. Is that the catalyst, if you will, that
16 brought about the change in the report?

17 A. No. The change was realizing that it
18 was an error and wanting to -- we were thinking
19 of writing a corrected report because of that
20 error.

21 Q. Did you have the conversation with
22 Mr. Hartman where this error was discussed?

23 A. I believe I have had a conversation
24 where it has been mentioned with him. I can't

1 recall the conversation.

2 Q. Tell the court if you would all the
3 details of that conversation.

4 A. I cannot recall the details of that
5 conversation.

6 Q. The only thing you recall is that you
7 and he had a conversation --

8 A. Regarding that error.

9 Q. -- wherein there was discussed an issue
10 regarding the erroneous reference to a
11 Model 532?

12 A. Yes, I brought it up.

13 Q. What's the correct reference?

14 A. Again, I am not certain as to the
15 correct model number.

16 Q. Have you ever learned the correct model
17 number?

18 A. No, sir.

19 Q. How could you determine that it is an
20 error if you don't know the correct one?

21 A. Because the 532 would not be consistent
22 with the footswitch that was in use at the time.

23 Q. Yeah, but this is referring to the
24 footswitch that was sold in 1978. This isn't

1 referring to the footswitch -- notice here,
2 Manual for the subject machine illustrates a
3 Linemaster footswitch which based upon the
4 interrogatories document production of Heim is a
5 Model 532-SWH; do you see that?

6 A. I see that.

7 Q. Is that an error?

8 A. Yes.

9 Q. And have you how determined that to be
10 an error if you don't know what the actual model
11 was that was sold in 1978?

12 A. I believe it is an error because --
13 well, first, it was error to name a model in the
14 first place in that Heim though they provided
15 the -- that specification sheet that I discussed
16 earlier, also in the interrogatories noted that
17 they had no proof as to it being the correct
18 model number.

19 Q. Do you know what model Heim sold in
20 1978 with this press brake?

21 A. I do not.

22 Q. Do you know if it was even a Linemaster
23 footswitch?

24 A. I do not know what Heim sold.

1 Q. Do you know of anyone that knows the
2 details, the manufacturer with a model number of
3 the foot control that accompanied the sale of
4 Heim's press brake in 1978?

5 MR. HARTMAN: Other than Professor Barnett.

6 MR. ROBINSON: No, not other than
7 Professor Barnett.

8 BY MR. ROBINSON:

9 Q. Do you know of anyone that does.

10 A. I believe Professor Barnett does.

11 Q. What does -- I just talked to him. He
12 doesn't know either.

13 MR. HARTMAN: Well, I object to the form of
14 the question because that is not what that
15 witness testified over six hours.

16 BY MR. ROBINSON:

17 Q. Okay, what -- besides Mr. Hartman's
18 comment --

19 MR. HARTMAN: And your misstatement of the
20 record.

21 BY MR. ROBINSON:

22 Q. -- what makes you think that
23 Professor Barnett knows the model of the foot
24 control that accompanied the press brake in

1 1978?

2 A. I can't be sure if he knows the model
3 or not.

4 Q. Have you ever talked to him about the
5 model number?

6 A. No, I have not.

7 Q. So why did you answer Professor Barnett
8 if you don't know?

9 A. Because he was around then and he was
10 using -- he was around the presses and -- that
11 Heim was making at the time and he has a better
12 idea than I do. I was born in 1976.

13 Q. Have you -- has Professor Barnett ever
14 told you that he knew specifically what foot
15 control came with this particular press brake --

16 A. He --

17 Q. -- regardless of how old he is?

18 A. He has not told me that.

19 Q. Has anyone ever suggested to you that
20 he has any information as to what manufacturer
21 or what model foot control accompanied the sale
22 of this press brake in 1978?

23 A. I believe he has said that he knows the
24 type of footswitches that were in use at that

1 time.

2 Q. No, I am asking specifically about the
3 one that accompanied either the manufacturer or
4 the model that accompanied this particular Heim
5 press brake that's at issue in this litigation.

6 Has he ever suggested to you that he
7 knows which model or which manufacturer was
8 supplied with that press brake in 1978, this
9 particular one?

10 A. I believe that Heim itself has agreed
11 that it has been a Linemaster that's been on the
12 machines.

13 Q. Would you answer my question, sir.

14 MR. HARTMAN: Would you quit intimidating or
15 trying to intimidate.

16 MR. ROBINSON: The question --

17 MR. HARTMAN: -- the witness. I am going to
18 object to your being rude and sarcastic to
19 witnesses because you don't like their
20 testimony. You should show some sense of
21 decorum to this gentleman.

22 MR. ROBINSON: You explaining --

23 MR. HARTMAN: He came back here as a
24 courtesy.

1 MR. ROBINSON: -- professional behavior is
2 meaningless.

3 MR. HARTMAN: He came back as a courtesy to
4 you.

5 MR. ROBINSON: No, he came back because you
6 know he is required to come back because we
7 weren't given the full materials. Let me ask it
8 again.

9 MR. HARTMAN: You were given the full
10 materials.

11 MR. ROBINSON: Why don't you read back the
12 question please.

13 Please listen to the question.

14 And if you can't locate it, I know it.

15 (Whereupon, the record was read
16 as requested.)

17 THE WITNESS: He does know -- I believe he
18 has indicated that he knows that it is a
19 Linemaster that came with this machine.

20 BY MR. ROBINSON:

21 Q. Professor Barnett has told you that?

22 A. I believe so.

23 Q. And what did he tell you about that?

24 A. I don't believe we have necessarily had

1 a discussion directly at that as it has been
2 admitted that they used Linemaster.

3 Q. I don't want you to talk about what you
4 think has been admitted and what you may not
5 think has been admitted. My question --

6 A. I am answering the question.

7 Q. No, well, please listen to the
8 question. I will ask it again. Has
9 Professor Barnett ever told you that he knows
10 either the manufacturer or the model number of
11 the foot control that accompanied the sale, the
12 1978 sale of this press brake?

13 A. I believe he has indicated that he
14 knows that it was a Linemaster.

15 Q. And what did he tell you about that?

16 A. I can't recall any specifics as to what
17 he told me about that.

18 Q. Did he tell you how he would know such
19 a thing?

20 A. I believe he has said Heim has used
21 Linemaster exclusively for a long period of
22 time.

23 Q. Okay, that's something else you
24 remember him saying to you?

1 A. I believe so.

2 Q. Do you remember anything else about
3 this conversation with Professor Barnett as to
4 him knowing the actual manufacturer and model
5 number of the foot control that went with this
6 particular Model 70-6 press brake in 1978?

7 A. I do not.

8 Q. When you and Mr. Hartman had your
9 conversation about changing this report --

10 MR. HARTMAN: Objection to that -- framing
11 that question that way.

12 MR. ROBINSON: What's wrong with that?

13 MR. HARTMAN: Because you are indicating
14 here -- you are implying that I asked him to
15 change the report or that I was involved in
16 changing the report.

17 BY MR. ROBINSON:

18 Q. No. When you and Mr. Hartman -- did
19 you -- you have already indicated you and
20 Mr. Hartman had a conversation about this
21 changing the report; right?

22 A. I indicated that we had had a
23 discussion about the error.

24 Q. Right.

1 A. Of naming the 532.

2 Q. Right, and you would like to change
3 this report; is that right?

4 A. Yes.

5 Q. Okay. So when you and Mr. Hartman had
6 a conversation about changing the report, how
7 did that conversation take place? Was it via
8 telephone?

9 A. I believe so, yes.

10 Q. Who initiated that telephone call?

11 A. I am not certain as to who initiated
12 the telephone call.

13 Q. You don't know if Mr. Hartman called
14 you about it?

15 A. I don't -- I don't know if that -- if
16 that phone call was directly related to that
17 issue.

18 Q. Who was the first person to bring up
19 the perceived error in the report?

20 A. I was.

21 Q. And what caused you to learn about this
22 error?

23 A. Because of Mr. Switalski's report that
24 described the 532, and I looked into it and saw

1 that it was an error.

2 Q. And what about Mr. Switalski's report
3 are you referring?

4 A. I am referring to where he -- first
5 where he indicated that we had identified the
6 footswitch as a 532-SWH. That certainly gave me
7 pause in that I believe that it had been Heim
8 and that made me look at the interrogatories.
9 And I saw that -- I saw that Heim had no proof
10 as to the specification that you have right
11 there in your hands being -- that they had any
12 proof that that was the correct specification.

13 Q. No proof, what is that? What is
14 Barnett Exhibit D? Have you ever seen that
15 before?

16 A. I believe so.

17 Q. Do you know what that is?

18 A. That's the specification, A-470 that I
19 discussed earlier I believe.

20 Q. And what's the date of that drawing?

21 A. The date of the drawing is 7-9-74 in
22 the box below.

23 Q. That four years prior to the sale at
24 issue?

1 A. I believe so.

2 Q. Does that indicate to you what type of
3 footswitch was in use by Heim at any time?

4 A. I am not exactly sure what it indicates
5 to me other than a list of footswitches.

6 Q. Does it indicate to you -- are you able
7 to glean any information from that document as
8 you review it as to whether or not it indicates
9 that Heim was using any particular footswitches
10 at any particular time?

11 A. I don't understand the -- I don't
12 understand the two entries on the sheet here,
13 the one that's handwritten and the one that's
14 typed. I don't understand what the difference
15 there is.

16 Q. Does this tell you, sir, what type
17 of -- what model of foot control was sold by
18 Heim at any given time with its machinery?

19 A. It lists footswitches, and it says used
20 on all presses at the bottom.

21 Q. Does it give you any dates as to when
22 particular models were used?

23 A. Like the first date is 7-9-74 at the
24 bottom.

1 Q. Yeah, and does it indicate to you in
2 any way as to what was in use at that time from
3 1974, the date you just read?

4 A. Well, they have a notation 1 that I
5 don't see anywhere on here, that on 11-9-82 the
6 511B4 was 532-SWH.

7 Q. Does that suggest to you that prior to
8 November 9, of '82, they used a 532 and that it
9 was changed on November 9th of '82 to a 511B4?

10 A. It's -- I have no idea what the No. 1
11 notation is. No. 2 here has a note up here and
12 No. 1 doesn't have one.

13 Q. Does this suggest to you at all, sir,
14 that they were using a 532 as of 19 -- as of
15 July 9, '74, and as of November 9 of '82, they
16 switched it to a 511B4?

17 A. I can't be sure that that's what this
18 means.

19 Q. Have you had any conversations with
20 anyone including Mr. Hartman about that issue?

21 A. I have had discussions after I found
22 the interrogatory that said that they had this
23 and couldn't prove that this meant anything with
24 the machine. And I have had discussions that --

1 regarding my error in identifying it as a 532
2 based off of this.

3 Q. Have you spoken with Mr. Hartman about
4 this document?

5 A. I believe so.

6 Q. And by this document I am referring to
7 Barnett Exhibit D.

8 A. I believe so.

9 Q. Would you tell the court and jury the
10 content of the conversation that you had with
11 Mr. Hartman about that document.

12 A. I believe I mentioned that I had
13 pulled -- when I noticed that I was in error, I
14 believe that I notified him in some
15 conversations, like I said before I am not sure
16 if I called him or he called me, and I brought
17 this up in conversation that the 532 mentioned
18 the report was in error and I had pulled it off
19 of this sheet here. And I believe he directed
20 me to the interrogatories.

21 Q. Have you read something that says that
22 a 532 was not in use in 1978?

23 A. No, only that they had no proof that
24 this was correct.

1 Q. The only document that we have is
2 something that suggests that a 532 was in use
3 from 1974 until 1982; would that be accurate?

4 A. The only document that's been supplied
5 about switches by Heim I suppose.

6 Q. And nothing else to suggest anything
7 other than a 532 from 1974 to 1982; would that
8 be accurate?

9 A. I don't believe so. It is usually the
10 Heim corporate designees nor the interrogatories
11 being able to note that this was the footswitch
12 in use.

13 Q. What do those interrogatory answers say
14 that you are referring to?

15 A. It is the second set of
16 interrogatories, second request No. 4.

17 Q. Yeah, and what does it say?

18 A. Can I pull it out of here?

19 Q. Sure. What do you remember it saying
20 while you are looking?

21 A. Well, I remember it saying that they
22 have included this specification, but they have
23 no proof as to it being the correct
24 specification.

1 Q. Did you read the other interrogatory
2 responses that also address that issue?

3 A. I can't be certain.

4 Q. About the inability to confirm what was
5 actually sold because of the absence of people
6 involved with the sale being present?

7 A. I don't recall seeing that.

8 Q. Do you have the answer in front of you?

9 A. Oh, for the previous question, yes.

10 Q. And there is a flag on there with an
11 arrow?

12 A. Yes, sir.

13 Q. Who put that on there?

14 A. I did.

15 Q. And when did you put that on there?

16 A. I put that on there last night.

17 Q. Why was that?

18 A. I was giving this to Professor Barnett.

19 Q. Was Mr. Hartman present as well?

20 A. Not when I put this on.

21 Q. And why did you put that on there?

22 A. Because I wanted to draw his attention
23 to that.

24 Q. For what purpose?

1 A. Because of the error in the report.

2 Q. When did you note the error?

3 A. When I received Switalski's's report.

4 Q. Which was when, sir?

5 A. Which was I believe -- I can't remember
6 what day they came in. It was a Wednesday or a
7 Thursday evening.

8 Q. How long ago approximately?

9 A. Two weeks perhaps.

10 Q. How come a revised report wasn't
11 prepared for these depositions?

12 A. It had been discussed, we hadn't
13 prepared it. We had other work we had been
14 doing.

15 Q. Was there any discussions about
16 preparing a revised report?

17 A. Yes.

18 Q. And providing it to us so that we knew
19 prior to today and prior to asking questions on
20 the issue about the error?

21 A. There were no discussions about that.

22 Q. Did you have discussions about -- I
23 thought you just answered that there were
24 discussions.

1 A. We had discussions about writing
2 revised report, but -- not --

3 Q. Did you have discussions with Mr. Hartman
4 about that?

5 A. I believe I may have indicated to him
6 that we wanted to correct that.

7 Q. This indicates Heim has searched its
8 records to determine if any drawings or
9 specifications exist with regard to the foot
10 pedal that was supplied with the Model 70-6
11 press brake at issue. The attached drawing may
12 be a drawing for the footswitch supplied with
13 the press brake at issue. Is that what it says?

14 A. I didn't see the emphasis there on the
15 may be. I saw it more on the may, but may be --

16 Q. Did I read it correctly, sir? Sir, I
17 am going to continue reading. Have I read it
18 correctly so far? Have I read the words
19 correctly, sir?

20 A. I believe you added emphasis that
21 wasn't necessarily there.

22 Q. Strike out the issue with the emphasis.

23 MR. HARTMAN: No, no, we are not striking
24 anything.

1 BY MR. ROBINSON:

2 Q. Have I --

3 MR. HARTMAN: Wait, wait, for the record,
4 for the record we don't strike anything at your
5 request. We are going to have exactly --

6 MR. ROBINSON: Who is we?

7 MR. HARTMAN: Me, I don't -- I am
8 instructing Mr. Ulmenstein not to strike
9 anything at Mr. Robinson's without concept from
10 me because once again he tries to play games and
11 misconstrue what is really there.

12 And when the witness on his own
13 admission picks it up, he doesn't like it and
14 then he wants to strike --

15 MR. ROBINSON: I don't know what you are
16 talking about. Tell me when you are done. I
17 will move on.

18 MR. HARTMAN: Okay.

19 MR. ROBINSON: Are you done?

20 MR. HARTMAN: Yep.

21 BY MR. ROBINSON:

22 Q. Let me read it again. I don't want you
23 to worry or comment upon any inflection that you
24 may think I have mentioned in my voice or any

1 emphasis. The only thing I want to know is if I
2 am reading it correctly for the court.

3 A. I believe since it is a videotape
4 deposition that the emphasis certainly matters.

5 Q. Sure, it may to you and that's fine.
6 You have made your point. But for my purposes
7 now let me at least see if I read this
8 correctly, "Without waiving these objections,
9 Heim has searched its records to determine if
10 any drawings or specifications exist with regard
11 to the foot pedal that was supplied with the
12 Model 70-6 press brake at issue. The attached
13 drawing may be a drawing for the footswitch
14 supplied with the press brake at issue
15 considering the date of the drawing, but Heim
16 has no ability of verifying this;" do you see
17 that?

18 A. I do.

19 Q. So the only response that you have from
20 Heim is that it, in fact, may be but there is no
21 ability to verify it; is that accurate?

22 A. I am not certain if that's the only --
23 the only response that we have that indicates
24 that they can't verify.

1 Q. What does it say about any other issue
2 regarding whether or not it is -- that's a
3 drawing of the footswitch that was supplied in
4 1978 other than that it may be, but there is no
5 ability to verify it? What other substance is
6 there that I am missing?

7 A. I can't say that it is the only
8 indication in any of the materials produced by
9 Heim. That's --

10 Q. That's the only one you know of today,
11 right now; right?

12 A. Right now, currently, yes.

13 Q. So why was it that you decided that the
14 reference to the 532 being sold in 1978 was in
15 error if this says that it may be, there is just
16 no ability to verify? Why would you say it is
17 in error?

18 A. Because the footswitch that was
19 observed was not a 532.

20 Q. This is the footswitch that was
21 observed after the accident?

22 A. Yes.

23 Q. And you have no ability to confirm that
24 that's the same one that was sold at the time

1 the machine was sold in '78; do you?

2 A. I have no ability to say either way.

3 MR. ROBINSON: Okay, I don't have any
4 further questions.

5 MR. HARTMAN: I have one question.

6 EXAMINATION

7 BY MR. HARTMAN:

8 Q. I need Professor Barnett's report.
9 There has been a lot of fuss made about the 532
10 identification of the foot control. Would you
11 please look at Page 2, the last paragraph under
12 identification.

13 A. Yes.

14 Q. After you identify the switch as a 532,
15 does that -- does the next paragraph describe
16 what it is that you are identifying as a 532
17 switch in your mind at the time you prepared
18 this report?

19 A. I believe so. I believe that the --
20 the -- that last paragraph there was written
21 previous to entering the model number.

22 Q. And when you are trying to enter the
23 model number for 532, were you trying to
24 accurately describe what that paragraph is as it

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